



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 690 OF 2009

IN THE MATTER OF THE ESTATE OF GIBSON KINUKA NDUNGA (DECEASED)

JEDIDAH MATHEMBU NDUNDAPETITIONER/APPLICANT

VERSUS

RAEL MUTUNGE.....OBJECTOR/RESPONDENT

RULING

1. By an Application dated **20th May 2013**, the petitioner herein seeks an order restraining the Objector from intermeddling with the deceased's estate until proceedings herein are determined. Secondly, she seeks an order restraining the objector from entering the home of the deceased at **Katwala in Kitui County**.
2. The application is supported by an affidavit deposed by the petitioner where she deposes that she established with the deceased a matrimonial home at **Katwala in Kitui County**. After the demise of deceased, the objector who was a stranger to her invaded the deceased's commercial properties at **Katwala Market** in company of other strangers whom she came to learn that they were the objector's adult children. They took possession of the properties and rented others out to third parties.
3. The objector and her children have now embarked upon leasing out the agricultural land to third parties and they have also invaded the matrimonial home. She prayed for the restraining orders for purposes of preserving the deceased's estate until the grant of Letters of Administration issued to her is confirmed.
4. In her replying affidavit the objector denied having intermeddled with the estate of the deceased, she stated that she was utilizing it in her capacity as a widow to the deceased the way she used to do from the time she married the deceased in an endeavour to earn income and pursuant to the order of the court of *status quo* being maintained. She denied having sold any of the deceased's property and argued that the applicant had not come to court with clean hands as she had not disclosed some of the properties of the deceased.
5. This is a case where the objector readily admits utilizing the estate of the deceased save that she does not view her action as an interference with the deceased's free property. According to her, following the court order for status to be maintained she was eligible to continue earning an income from the estate of the deceased until distribution of the estate of the deceased.
6. When the order was made requiring *status quo* to be maintained the respondent was required to furnish the court with a full statement of account as from **March 2009** with respect of all rents that she had collected from the estate of the deceased and she was not supposed to intermeddle with the estate. None of the parties herein were supposed to act in a manner that was detrimental to the estate of the deceased.
7. It is apparent that the Petitioner and Objector entered into a consent which stipulated as follows:

- i) A grant of Letters of Administration do issue to the Petitioner.*
 - ii) The Petitioner within 30 days after issue of grant to file and serve summons for the Confirmation of Grant thereof.*
 - iii) The objector do within 30 days file an affidavit of protest.*
 - iv) That the Petitioner may respond to such affidavit of protest within 14 days of service.*
8. Having consented to the Grant of Letters of Administration Instate being issued to the Petitioner herein, it was solely the duty of the Petitioner to administer the estate of the deceased. It is therefore unlawful for the Objector herein to continue intermeddling with the estate of the deceased. What happens to the estate of the deceased must be with the consent of the applicant herein. The Objector must therefore be accountable for the damage she has caused so far to the estate.
 9. This court has inherent powers to prevent abuse of the process of the court and also protect the estate of the deceased (*vide Rule 73 of the Probate and Administration Rules and Section 45 of the Law of Succession Act*).
 10. Having noted the complexity of this matter justice would call upon the court to hear the Applicant and Protester (Objector) as soon as possible and have the grant of administration intestate confirmed as soon as possible. I will direct that the application be fixed for hearing within **21 days**.
 11. In the meantime, the Objector/Respondent is hereby restrained from interfering with the estate of the deceased without any authorization from the court.
 12. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 3RD day of APRIL, 2014

L.N. MUTENDE

JUDGE